

SCOTT N. SCHOOLS, SC SBN 9990
United States Attorney
JOANN M. SWANSON, CSBN 88143
Assistant United States Attorney
Chief, Civil Division
ILA C. DEISS, NY SBN 3052909
Assistant United States Attorney

450 Golden Gate Avenue, Box 36055
San Francisco, California 94102
Telephone: (415) 436-7124
FAX: (415) 436-7169

Attorneys for Defendants

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

EMILIO MORALES,

Plaintiff,

v.

MICHAEL CHERTOFF, as Secretary of the
Department of Homeland Security;
EMILIO T. GONZALEZ, Director of the
U.S. Citizen and Immigration Services;
ROBERT S. MULLER, Director of
Federal Bureau of Investigation,

Defendants.

No. C 07-2991 MJJ

ANSWER

The Defendants hereby submit their answer to Plaintiff's Complaint for Writ in the Nature of Mandamus and Declaratory Judgment.

1. Paragraph One consists of Plaintiff's characterizations of the lawsuit for which no answer is required; however, to the extent that such allegations are deemed to require an answer, Defendants deny that they have withheld the action to Plaintiff's detriment.

PARTIES

2. Defendants admit that the Plaintiff's alien registration number is A75-820-181, and the naturalization application was filed on June 7, 2004.

3. Defendants admit the allegations in Paragraph Three.

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1 4. Defendants admit the allegations in Paragraph Four.

2 5. Defendants deny the allegations in Paragraph Five.

3 **JURISDICTION**

4 6. Paragraph Six consists of Plaintiff's allegation regarding jurisdiction, to which no
5 responsive pleading is required.

6 **VENUE**

7 7. Paragraph Seven consists of Plaintiff's allegations regarding venue, to which no responsive
8 pleading is required.

9 **EXHAUSTION OF REMEDIES**

10 8. Paragraph Eight consists of Plaintiff's conclusion of law for which no answer is required;
11 however, to the extent that such allegations are deemed to require an answer, Defendants deny the
12 allegations contained in this paragraph.

13 **CAUSE OF ACTION**

14 9. Defendants admit the allegations in Paragraph Nine with the exception that the application
15 was filed on June 7, 2004.

16 10. Defendants admit that the applicant was fingerprinted on September 27, 2004.

17 11. Defendants admit the allegations in Paragraph Eleven.

18 12. Defendants are without sufficient information to admit or deny the allegations in
19 Paragraph Twelve.

20 13. Defendants are without sufficient information to admit or deny the allegations in
21 Paragraph Thirteen.

22 14. Defendants are without sufficient information to admit or deny the allegations in
23 Paragraph Fourteen.

24 15. Defendants are without sufficient information to admit or deny the allegations in
25 Paragraph Fifteen.

26 16. Defendants are without sufficient information to admit or deny the allegations in
27 Paragraph Sixteen.

28 17. Defendants are without sufficient information to admit or deny the allegations in

1 Paragraph Seventeen.

2 18. Paragraph Eighteen consists of Plaintiff's conclusion of law for which no answer is
3 required; however, to the extent that such allegations are deemed to require an answer, Defendants
4 deny the allegations contained in this paragraph.

5 19. Paragraph Nineteen consists of Plaintiff's conclusions of law and/or characterizations fo
6 the lawsuit for which no answer is required; however, to the extent that such allegations are
7 deemed to require an answer, Defendants deny the allegations contained in this paragraph.

8 20. Defendants deny the allegations in Paragraph Twenty as the background checks are still
9 pending.

10 21. Defendants are without sufficient information to admit or deny the allegations in
11 Paragraph Twenty-One.

12 22. Paragraph Twenty-Two consists of Plaintiff's conclusions of law for which no answer is
13 required; however, to the extent that such allegations are deemed to require an answer, Defendants
14 deny the allegations contained in this paragraph.

15 **PRAYER**

16 23. Paragraph Twenty-Three consists of Plaintiff's prayer for relief, to which no admission or
17 denial is required; to the extent a responsive pleading is deemed to be required, Defendants deny
18 these paragraphs.

19 **FIRST AFFIRMATIVE DEFENSE**

20 The court should dismiss the complaint under Fed. R. Civ. P. 12(b)(6) because Plaintiff fails to
21 state a claim upon relief may be granted. In the alternative, the Court should remand the matter
22 under 8 U.S.C. § 1447(b) with instructions.

23 WHEREFORE, Defendants pray for relief as follows:

24 That judgment be entered for Defendants and against Plaintiff, dismissing Plaintiff's
25 Complaint with prejudice or remanding the matter to the agency; that Plaintiff take nothing; and
26 that the Court grant such further relief as it deems just and proper under the circumstances.

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1 Dated: September 13, 2007

Respectfully submitted,

2 SCOTT N. SCHOOLS
3 United States Attorney

4 /s/
5 ILA C. DEISS
6 Assistant United States Attorney
7 Attorneys for Defendants
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